

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HAROLD R. FEEZLE,)	
SUSAN E. SCHEUFELE,)	CASE NO. 4:23-cv-00242-BYP
DAVID J. SCHEUFELE, ROLLERENA)	
AUTO SALES, LLC, and MARILYN)	
FIGLEY, on behalf of themselves)	
and all others similarly situated,)	JUDGE BENITA Y. PEARSON
)	
Plaintiffs,)	
v.)	
)	
NORFOLK SOUTHERN RAILWAY CO.,)	
and NORFOLK SOUTHERN CORP.,)	
)	
Defendants.)	

PLAINTIFFS' EMERGENCY NOTICE OF
INSPECTION FOR PURPOSES OF TESTING

TO: COUNSEL

You are hereby notified pursuant to Rule 34(a), Fed. R. Civ. P., that on Wednesday, March 1, 2023, commencing at 10:00 a.m., Plaintiffs and/or those authorized and/or retained by Plaintiffs (hereinafter "Plaintiff"), shall enter upon the site of the Train Derailment and wreckage in or around East Palestine, Ohio to inspect and sample the physical evidence consisting of soils, surface water and other surfaces remaining, including but not limited to railcar surfaces, on or near the site.

The Parties have been in conversations regarding the Plaintiffs' request to conduct sampling and testing in the locations identified below, which culminated in the letter sent from Plaintiffs to Defendants on February 27, 2023. *See* Exhibit A, Ltr. From A. Thompson to S. Clements. This Notice of Inspection is sent out of an abundance of caution due to the emergency nature of this request given Norfolk Southern's February 23, 2023 letter informing Plaintiffs

that Norfolk Southern intends to remove and/or destroy evidence after March 1, 2023. Plaintiffs note that other counsel have already filed a separate motion to enjoin Norfolk Southern from destroying this evidence, which was heard by the Court and therefore have not filed the motion in this case.

Plaintiffs will enter upon the above-described land for the purpose of inspection, sampling and testing, including but not limited to:

1. Inspecting, photographing, and videotaping the physical evidence identified below;
2. Conducting a forensic analysis of physical evidence identified below;
3. Sampling physical evidence and potentially impacted environmental media including at least three but no more than ten locations determined by Plaintiffs and their representatives consisting of surface soils, surface water and other surfaces including but not limited to railcar surfaces;
4. Sampling physical evidence and potentially impacted environmental media including soil and surface waters located at or within 25 feet the location of the railcars containing benzene and/or benzene residue that were removed from the accident site;
5. Sampling physical evidence and potentially impacted environmental media including surface wipe testing of the two railcars containing benzene and/or benzene residue that were removed from the accident site;
6. Sampling of the physical evidence and potentially impacted environmental media including soil designated to be removed from under the railroad tracks before such soil is removed or otherwise tampered; and
7. Sampling physical evidence and potentially impacted environmental media of

any excavated but not yet transported potentially contaminated soils to be designated by Plaintiffs and/or their representatives.

No destructive testing will be conducted. This inspection shall be unrestricted and Plaintiffs, and/or those acting on their behalf, shall have access to the physical evidence at the derailment site or otherwise specified above pursuant to Federal Rules of Civil Procedure Rule 34. Plaintiffs, and/or those acting on his behalf shall retain possession of all photographic, video, or sampling evidence collected and will not disclose such evidence to Defendant during or upon conclusion of the inspection. This Notice of Inspection is within the scope of Rules 26 and 34 of the Federal Rules of Civil Procedure. This Inspection will be completed in one day on March 1, 2023.

Dated: February 28, 2023

Respectfully submitted,

/s/ Jayne Conroy
Jayne Conroy (*pro hac vice*)
Gary DiMuzio (*pro hac vice*)
Jo Anna Pollock (*pro hac vice*)
Justin Presnal (*pro hac vice*)
SIMMONS HANLY CONROY LLC
112 Madison Avenue
New York, NY 10016
(212) 784-6400
jconroy@simmonsfirm.com
gdimuzio@simmonsfirm.com
jpollock@simmonsfirm.com
jpresnal@simmonsfirm.com

Neal E. Shapero (0009426)
Andrew J. Thompson (0071530)
SHAPERO | ROLOFF CO., LPA
1111 Superior Ave. East, Suite 1310
Cleveland, Ohio 44114
(216) 781-1700
nshapero@shaperoroloff.com
athompson@shaperoroloff.com

Nicholas T. Amato (0041277)
AMATO LAW OFFICE, LPA
420 Broadway Ave.
Wellsville, Ohio 43968
(330) 532-9500
amato.lawyer@gmail.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on February 28, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF system.

/s/ Jo Anna Pollock
Jo Anna Pollock